

Admin.

September 6, 1996

First Supplement to Memorandum 96-58

New Topics and Priorities: Public Utilities Code

Senate Bill 960, which has been sent to the Governor for his signature, provides:

SEC. 12. On or before June 30, 1997, the Public Utilities Commission in consultation with the Law Revision Commission shall submit a report to the Legislature on needed revisions of the Public Utilities Code that result from the restructuring of the electrical, gas, transportation, and telecommunications industries.

This bill is part of the public utilities restructuring package adopted by the Legislature at the close of the current legislative session after extensive conference committee hearings on the matter. The Senate authors are Leonard, Peace, and Sher; the Assembly authors are Conroy, Kuykendall, and Martinez. The package was worked out in conjunction with the Governor's office, so it may be assumed that the Governor will sign Senate Bill 960 into law.

Section 12 of the bill, requiring a report on needed revisions of the Public Utilities Code, assumes that the restructuring of public utility regulation, or deregulation, renders parts of the Code obsolete. The existing Code is based on a model of regulation of monopolies through command and control, whereas the new statutory scheme provides procedures suited to the emerging competitive utility marketplace. In this respect, many of the statutory responsibilities of the Public Utilities Commission may be antiquated and unnecessary.

The concept of Section 12 is that the Public Utilities Code needs to be cleaned up to reflect the new statutory approach. The Public Utilities Commission is the utilities regulation expert, and the Law Revision Commission is the revision of obsolete statutes expert; so the bill requires a report of the PUC in consultation with the CLRC. The conference committee, in coming up with this scheme, also was conscious of the Law Revision Commission's expertise in the area of administrative procedure. The CLRC's administrative procedure work influenced the conference committee in its proposals on PUC hearing and judicial review procedures.

To our knowledge, the Commission has never before been asked by the Legislature to act in a consultative capacity with another agency. The Commission's enabling statute does require the Commission to "confer and cooperate" with any legislative committee on revision of the law, and requires state agencies to give the Commission "full information, and reasonable assistance in any matters of research requiring recourse to them". Gov't Code §§ 8286, 8295. However, we have no models as to how to conduct a consultation on a particular topic.

The phrasing of the statutory assignment appears to impose primary responsibility for the report on the Public Utilities Commission. It is appropriate that the PUC take the lead on this project, based on the subject matter and the time allotted. Within this framework, the staff can see several possible levels of Law Revision Commission involvement, from minimal to maximal:

(1) The CLRC staff could advise the PUC staff on basic procedures involved in the conduct of a project of this sort.

(2) The CLRC staff could monitor proceedings and drafts prepared by the PUC on this project, and give feedback to them on an ongoing basis.

(3) The CLRC could review materials prepared by PUC, focusing on procedural and substantive problem areas identified by PUC, and make recommendations on the problem areas.

(4) The CLRC could circulate PUC materials to interested persons for comment, review the comments, and submit Commission recommendations on the materials to the PUC and/or the Legislature.

Based on our discussions with legislative staff, the Legislature is looking to us for more than minimal involvement of the type outlined in (1) above. Assuming the PUC review actively involves interested persons and organizations, then something somewhere between (2) and (3) may be appropriate. For example, the Law Revision Commission's staff could monitor PUC activities, giving feedback to the PUC where appropriate, and bringing problem areas identified by the staff or the PUC to the CLRC for review and recommendation. We could make a separate report to the Legislature on the extent to which CLRC recommendations are implemented in the PUC report.

The Public Utilities Commission may also have some ideas on the type of consultation that is appropriate here. We have not yet heard their perspective on

this, but will try to have some input by the time of the September 12 Law Revision Commission meeting.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary